U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17858325

Date: AUG. 19, 2021

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a sales and marketing officer, seeks second preference immigrant classification as an advanced degree professional and as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this employment-based, "EB-2" classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not qualify for classification as an individual of exceptional ability, and that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us, and we dismissed the appeal, concluding that the Petitioner had not established that he was an advanced degree professional or an individual of exceptional ability, or that he was eligible for a national interest waiver of the job offer.[1] The matter is now before us on a motion to reopen and a motion to reconsider. On motion, the Petitioner submits a brief.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motions.

I. MOTIONS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In addition, a motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

[1] *See* In Re: ID# 9046651 (AAO JAN. 27, 2021).

II. ANALYSIS

As an initial matter, we note that the review of any motion is narrowly limited to the basis for the prior adverse decision. Accordingly, we examine any new facts and arguments to the extent that they pertain to our prior dismissal of the Petitioner's appeal.

On motion, the Petitioner submits a personal statement explaining why he believes he is qualified for the underlying EB-2 classification as well as a national interest waiver. However, the Petitioner does not provide new facts related to our prior decision or any new documentary evidence, nor has he demonstrated that we erred in our previous analysis based on the record before us on appeal.

As noted in our prior decision, in order to qualify for a national interest waiver, the Petitioner must first show that he qualifies for classification under section 203(b)(2)(A) of the Act as either an advanced degree professional or an individual of exceptional ability. Furthermore, we explained in our decision that he had not met the first prong set forth in the *Dhanasar* analytical framework, thus rendering analysis of the remaining two prongs moot.

A. Advanced Degree Professional

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following definition:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Regarding his claim of eligibility as an advanced degree professional, which he raised for the first time on appeal, the Petitioner states on motion that "USCIS disregarded documentation from a U.S. university that the petitioner submitted during initial filing and in response to the Director's request for additional evidence (RFE)," and states that the petition would have been approved had USCIS considered this documentation. The Petitioner makes specific reference to a "transcript submitted in the Petitioner's name,"[2] but he has not identified any new facts supported by documentary evidence to meet the requirements of a motion to reopen. As explained in our previous decision, because the record did not contain a diploma, transcript, or other evidence demonstrating that the Petitioner held a U.S. baccalaureate degree or foreign equivalent, the record was insufficient to establish his eligibility as a member of the professions holding an advanced degree. On motion, the Petitioner has not stated new facts supported by documentary evidence to overcome this determination.

In addition, the Petitioner has not met the requirements for a motion to reconsider as he has not demonstrated that we erred in our previous analysis based on the record before us on appeal. The

[2] It appears that the Petitioner is referring to a previously submitted transcript from College [redacted], indicating that he completed three courses at this institution and earned a total of 5 credit hours. This transcript does not support the Petitioner's contention that he earned a U.S. baccalaureate degree, or foreign equivalent, as required under 8 C.F.R. § 204.5(k)(3)(i)(B).

Petitioner asserts on motion that sufficient evidence was previously submitted to establish his eligibility as an advanced degree professional. A motion to reconsider, however, is based on an incorrect application of law or policy. 8 C.F.R. § 103.5(a)(3). A request to reanalyze documentation without showing how we incorrectly applied law or policy does not meet the requirements of a motion to reconsider.

Accordingly, the Petitioner has not shown proper cause for reopening the proceedings or reconsidering our decision on the issue of whether he qualifies as an advanced degree professional. The combined motion is dismissible on this ground.

B. Exceptional Ability

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition: "*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." Additionally, in order to demonstrate exceptional ability, a petitioner must submit at least three of the types of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).

Regarding his alternative claim that he is an individual of exceptional ability, we determined that the Petitioner's appeal brief did not address or specifically identify any erroneous conclusion of law or statement of fact relating to the Director's determinations for the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (F). We further noted that despite submitting certificates of participation he received for completing training programs hosted by the Sales and Marketing Institute (SMI) and [redacted] he did not provide evidence identifying him as a member of these organizations, nor did he provide evidence that their membership body is comprised of individuals who have earned a U.S. baccalaureate degree or its foreign equivalent, or that SMI and [redacted] otherwise constitute "professional associations" to satisfy the requirements of 8 C.F.R. § 204.5(k)(3)(ii)(E).

On motion, the Petitioner does not provide new facts related to our prior decision or any new documentary evidence. The Petitioner does not address the lack of specific arguments on appeal regarding the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A) and (F), nor does he submit new facts supported by documentary evidence to overcome our determination that he did not establish eligibility under the membership criteria at § 204.5(k)(3)(ii)(E). Rather, the Petitioner's motion repeats previous arguments that he satisfies at least three of the evidentiary criteria at 8 C.F.R. § 204.5(k)(3)(ii) and generally asserts that the previously submitted documentation was sufficient. These assertions alone do not overcome our previous findings, and do not establish that he meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) and that he has achieved the level of expertise required for exceptional ability classification. Assertions made without supporting documentation are of limited probative value and do not carry the weight to satisfy the Petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998).

The Petitioner has not met the requirements for a motion to reconsider as he has not demonstrated that we erred in our previous analysis based on the record before us on appeal. The Petitioner asserts on motion that sufficient evidence was previously submitted to establish his eligibility as an individual of exceptional ability. A motion to reconsider, however, is based on an incorrect application of law or

policy. 8 C.F.R. § 103.5(a)(3). Again, a request to reanalyze documentation without showing how we incorrectly applied law or policy does not meet the requirements of a motion to reconsider.

Accordingly, the Petitioner has not shown proper cause for reopening the proceedings or reconsidering our decision on the issue of whether he qualifies as an individual of exceptional ability. The combined motion is dismissible on this ground.

C. National Interest Waiver

The remaining issue is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, is in the national interest.

With respect to demonstrating eligibility for a national interest waiver pursuant to section 203(b)(2)(B)(i) of the Act, we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[3] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, USCIS may, as a matter of discretion[4], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[5]

With regard to our appellate determination that he did not establish eligibility under the first prong of the *Dhanasar* framework, the Petitioner contends as follows (verbatim):

> Petitioner's significant role in his previous employments and his successful marketing campaigns to many organizations and establishments in the Philippines increased sales in the organizations he was employed with can be possibly benefited the US economy upon his entry to the United States since he has a proven track record in sales and marketing and has a remarkable marketing strategy and unique techniques in sales and can bring superior benefits to national economy of the whole country.

The Petitioner further lists the evidence he previously submitted and contends that "the records show the petitioner satisfied this requirement." While his assertions are noted, the Petitioner does contest our findings relating to any specific documentation or offer further arguments demonstrating that our analysis under *Dhanasar*'s first prong was in error. Our appellate decision concluded that while the Petitioner's statements reflected his intention to provide valuable sales and marketing services for his U.S. employer and future clients, he had not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. We further determined that without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to his future work, the record did not show

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[3] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[4] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

[5] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

that benefits to the U.S. regional or national economy resulting from the Petitioner's sales and marketing projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*.

On motion, the Petitioner does not offer new facts or evidence relevant to our aforementioned findings. Instead, the Petitioner refers to his previously submitted evidence and asserts that it was sufficient to establish the national importance of his proposed endeavor. The Petitioner's motion does not include new facts supported by documentary evidence that overcome the grounds underlying our previous decision and that render him eligible under the first prong of the *Dhanasar* analytical framework.

Further, the Petitioner does not cite to any relevant law, regulation, or precedent establishing that our previous findings were based on an incorrect application of the law, regulation, or USCIS policy, nor does the motion demonstrate that our decision was erroneous based on the evidence before us at the time of the decision. In *Dhanasar*, we held that a petitioner must identify "the specific endeavor that the foreign national proposes to undertake." *Id*. at 889. Here, the Petitioner does not contest our findings relating to any specific documentation or offer further arguments demonstrating that our analysis under *Dhanasar*'s first prong was in error. The Petitioner instead broadly claims that the previously submitted documentation establishes eligibility.

The Petitioner has not met the requirements for a motion to reconsider as he has not shown that we erred in our previous analysis based on the record before us on appeal. Further, the motion to reconsider does not establish that our previous findings were based on an incorrect application of law, regulation, or USCIS policy, and the Petitioner does not refer to any legal authority to demonstrate that we erred in denying his appeal. A moving party must specify the factual and legal issues that were decided in error or overlooked in the decision or must show how a change in law materially affects the prior decision. *Matter of O-S-G*, 24 I&N Dec. 56, 60 (BIA 2006). Accordingly, the Petitioner has not demonstrated that his proposed work meets the "national importance" element of the first prong of the *Dhanasar* framework.[6]

Accordingly, the Petitioner has not shown proper cause for reopening the proceedings or reconsidering our decision on the issue of whether he qualifies for a national interest waiver. The combined motion is also dismissible on this ground.

III. CONCLUSION

The Petitioner's motion does not include new information or evidence that overcomes the grounds underlying our previous decision and does not show that our previous decision was based on an incorrect application of law or policy.[7] The Petitioner has not demonstrated that he qualifies as a member of the professions holding an advanced degree, or that he meets at least three of the six regulatory criteria at 8 C.F.R. § 204.5(k)(3)(ii) to qualify as an individual of exceptional ability. The Petitioner therefore has

[6] Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id*. at 893.

[7] The regulation at 8 C.F.R. § 103.5(a)(1)(iii) requires the motion to be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceedings and, if so, the court, nature, date, and status or result of the proceeding." In addition to the deficiencies noted above, the Petitioner did not include the required statement; therefore, his motion does not meet the applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

not established the Beneficiary's eligibility for the underlying EB-2 visa classification. In addition, as the record does not show that the Petitioner has met the first prong set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.